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In re Application of
Maecke et al.
Application No.: 10/533,906
PCT No.: PCT/EP01/05483
Int. Filing Date: 11 May 2001
Priority Date: 12 May 2000
Attorney Docket No.: 3025-107
For: Prochelators For The Preparation Of Radiometal
Labeled Molecules Having Improved Biological...

: DECISION
: ON
: PETITION

This is in response to the petition to revive under 37 CFR 1.137(b) filed 06 May 2005.

BACKGROUND

This international application was filed on 11 May 2001, claimed an earlier priority date of 12 May 2000, and designated the U.S. The International Bureau transmitted a copy of the published international application to the USPTO on 28 March 2002. A Demand electing the United States was filed prior to the elapse of 19 months from the priority date. The 30 month time period for paying the basic national fee in the United States expired at midnight on 12 May 2004. This international application became abandoned with respect to the national stage in the United States under 35 U.S.C. 371(d) for failure to timely pay the basic national fee.

DISCUSSION

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed; (2) the petition fee as set forth in § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

Regarding requirement (1), the “required reply” in the form of the basic national fee accompanied the petition.

Regarding requirement (2), the petition fee has been paid.

Regarding requirement (3), applicant states that “the entire delay in entering the application into the National Stage from the due date for entry until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional and applicants herewith submit the papers and fees for entering this application into the National Stage.” This differs from a statement that “the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Moreover, this statement has only been made by one of the joint inventors (Prof. Dr. Helmut Maecke). In the absence of any statement or evidence concerning whether unintentional delay was present on the

part of the other joint inventor(s), it would be inappropriate to consider the requirements of 37 CFR 1.137(b)(3) to have been satisfied.

Regarding requirement (4), no terminal disclaimer is required because the international filing date of this application is later than 8 June 1995.

Inspection of the declaration reveals that it names a joint inventor, "Klaus-Peter" Eisenwiener, who is not named in the published international application, and that the published international application names a joint inventor, "Klaus" Eisenwiener, who is not named in the declaration. Since this discrepancy is clearly more than a mere typographic error or phonetic misspelling of applicant's name, a proper petition under 37 CFR 1.182 is required to resolve this matter. Such a petition must be accompanied by the \$400.00 petition fee and by verified statements by the inventors and any other individuals having first-hand knowledge of the error. These statements must set forth in detail the specific circumstances as to how and when the error was made and discovered, and must also state (if appropriate) that the mistake was an inadvertent error made without deceptive intent.

DECISION

The petition under 37 CFR 1.137(b) is **DISMISSED**, without prejudice.

If reconsideration on the merits of this matter is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a).

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the PCT Legal Office.


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